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OFFICE OF PETITIONS

In re Patent No.: RE 38598

Issue Date: 21 September, 2004

Application No. 09/779,177

Filed: 8 February, 2001

Attorney Docket No. 4T02.1-020

DECISION

This is a decision on the petition filed on 1 December, 2010, under 37 C.F.R. §1.27(g)(2) requesting that status as a Small Entity be removed.

NOTE:

In view of their duty of candor to the Office to properly inquire to ascertain the accuracy of representations made before the Office (see: 37 C.F.R. §1.4, §10.18, MPEP §410), Petitioners always are reminded of the responsibility to review their records and submit accurate information to the Office.

It does not appear that Petitioner has provided the express schedule of fees/codes, payments made, payments due and differentials, with totals. (See: 37 C.F.R. §1.27, §1.28, MPEP §509.02, et seq.) The Office will not attempt to infer Petitioner's specific intents.

The address on the petition is other than that of the correspondence address of record. If Petitioner desires to receive future correspondence regarding this application, the appropriate Notice of Change of Address and/or Revocation/Power of Attorney documentation must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

As of this writing, Petitioner's submission is **NOT ACCEPTED** in the absence of a specification of the fees/codes, payments made, payments due and differentials, with totals.

Petitioner's request for reconsideration of this decision <u>must</u> be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR §1.27, §1.28."

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This is not a final agency action within the meaning of 5 U.S.C. §704.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that that those registered to practice <u>and</u> all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.¹

CONCLUSION

The instant petition under 37 C.F.R. §1.27, §1.28 is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

¹ <u>See</u> supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. <u>See Changes to Patent Practice and Procedure</u>, 62 <u>Fed. Reg.</u> at 53160 and 53178, 1203 <u>Off. Gaz. Pat. Office</u> at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

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Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2²) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

CC:

JAMES E. SCHUTZ TROUTMAN SANDERS LLP BANK OF AMERICA PLAZA 600 PEACHTREE STREET NE/STE. 5200 ATLANT, GA 30308-2216

² The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.